

## Chapter 5 Administration and Distribution

### **73-5-1 Appointment of water commissioners -- Procedure.**

- (1)
- (a) If, in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed for a four-year term by the state engineer.
  - (b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.
  - (c) The state engineer may appoint:
    - (i) more than one commissioner to distribute water from all or a part of a water source; or
    - (ii) a single commissioner to distribute water from several separate and distinct water sources.
  - (d) A water commissioner appointed by the state engineer under this section is:
    - (i) an employee of the Division of Water Rights;
    - (ii) career service exempt under Subsection 67-19-15(1)(j); and
    - (iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of Section 67-19-12.
- (2)
- (a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority opinion.
  - (b) The state engineer shall act in accordance with the recommendation of a majority of the water users, if the majority of the water users:
    - (i) agree upon:
      - (A) a qualified individual to be appointed as a water commissioner;
      - (B) the duties the individual shall perform; and
      - (C) subject to the requirements of Title 49, Utah State Retirement and Insurance Benefit Act, the compensation the individual shall receive; and
    - (ii) submit a recommendation to the state engineer on the items described in Subsection (2)(b)(i).
  - (c) If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.
- (3)
- (a)
    - (i) The salary and expenses of the commissioner and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from the river system or water source in accordance with a schedule to be fixed by the state engineer.
    - (ii) The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer on or before May 1 of each year.
  - (b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.

- (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:
    - (i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;
    - (ii) forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues; or
    - (iii) bring an action in the district court for the unpaid expense and salary.
  - (d) In any action brought to collect any unpaid assessment or to enforce any lien under this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.
- (4)
- (a) A commissioner may be removed by the state engineer for cause.
  - (b) The users of water from any river system or water source may petition the district court for the removal of a commissioner and after notice and hearing, the court may order the removal of the commissioner and direct the state engineer to appoint a successor.

Amended by Chapter 401, 2015 General Session

#### **73-5-1.5 Water Commissioner Fund.**

- (1) There is created an expendable special revenue fund known as the "Water Commissioner Fund."
  - (2) The fund consists of assessments paid to the state engineer by water users pursuant to Subsection 73-5-1(3).
- (3)
- (a) The fund shall earn interest.
  - (b) Interest earned on fund money shall be deposited into the fund.
- (4) The state engineer shall use fund money to pay for salary and expenses of water commissioners and other expenses related to the distribution of water specified in Subsection 73-5-1(3).

Amended by Chapter 401, 2015 General Session

#### **73-5-3 Control by engineer of division and distribution under judgments.**

- (1) The state engineer or the state engineer's designee shall carry into effect a judgment of a court in relation to the division, distribution, or use of water under the provisions of this title.
  - (2) The state engineer shall:
    - (a) divide water among several appropriators entitled to the water in accordance with the right of each appropriator;
    - (b) regulate and control the use of the water by closing or partially closing a head gate, cap, valve, or other controlling work of a ditch, canal, pipe, flume, well or tunnel, or other means of diversion to prevent the waste of water or its use in excess of the quantity to which an appropriator is lawfully entitled; and
    - (c) regulate a controlling work of reservoirs in accordance with the provisions of this title.
- (3)
- (a) If the state engineer regulates a head gate, cap, valve, or other controlling work of a ditch, canal, pipe, flume, well or tunnel, or other means of diversion, or the controlling work of a reservoir, the state engineer may attach to the controlling work a written notice, properly

dated and signed, setting forth that the controlling work has been properly regulated and is wholly under the state engineer's control.

- (b) The notice provided under Subsection (3)(a) shall be a legal notice, as to the facts contained in the notice, to all parties interested in the division and distribution of the water of the ditch, canal, pipe, flume, well or tunnel, or other means of diversion, or reservoir.
- (4)
  - (a) If the state engineer is required to enter upon private property to carry out the provisions of this title and is refused by the owner or possessor of the property the right of entry, the state engineer may petition the district court for an order granting a right of entry.
  - (b) After notice and hearing the court may grant the state engineer a right of entry, on security given by the state engineer to pay the owner of the property for all damage caused by the entry.

Amended by Chapter 369, 2014 General Session

#### **73-5-4 Controlling works and measuring devices.**

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:
  - (a) each location where water is diverted from a source; and
  - (b) any other location required by the state engineer.
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.
- (3) The state engineer shall approve the design of:
  - (a) the measuring device; and
  - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.
- (4) A person using water as an instream flow:
  - (a) shall install and maintain a measuring device or stream gauging station in the section of the stream within which the instream flow is maintained; and
  - (b) is not required to install controlling works unless the state engineer's order approving the application requires the installation because controlling works are necessary to achieve the purpose of the application.
- (5)
  - (a) An owner or manager of a reservoir shall construct and maintain a measuring device as directed by the state engineer to measure the inflow, storage content, and outflow from the reservoir.
  - (b) The state engineer shall approve the design and location of the measuring device.
  - (c) The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:
  - (a) forbid the use of water until the user complies with the state engineer's requirement; and
  - (b) commence enforcement proceedings authorized by Section 73-2-25.

Amended by Chapter 311, 2008 General Session

#### **73-5-7 Inspection of ditches and diverting works by engineer.**

- (1)
  - (a) The state engineer shall have authority to examine and inspect any ditch or other diverting works, and at the time of such inspection, the state engineer may order the owners thereof to make any addition or alteration that the state engineer considers necessary for the security of such works, the safety of persons, or the protection of property.
  - (b) If any person, firm, copartnership, association, or corporation refuses or neglects to comply with the requirements of the state engineer as described in Subsection (1)(a), the state engineer may bring action in the name of the state in the district court to enforce the order.
- (2) The state engineer shall, by July 1, 2017, inventory and maintain a list of all open, human-made water conveyance systems that carry 5 cubic feet per second or more in the state, including the following information on each conveyance system:
  - (a) alignment;
  - (b) contact information of the owner;
  - (c) maximum flow capacity in cubic feet per second;
  - (d) whether the conveyance system is used for flood or storm water management; and
  - (e) notice of the adoption of a management plan for the conveyance system as reported to the Division of Water Resources under Section 73-10-33.
- (3) The owner of an open, human-made water conveyance system that carries 5 cubic feet per second or more shall inform the state engineer if the information described in Subsection (2) changes.
- (4) The state engineer:
  - (a) may contract with a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to fulfill the duties described in Subsection (2); and
  - (b) may contract a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to provide technical support for a canal owner who is adopting a management plan, as described in Section 73-10-33.

Amended by Chapter 355, 2014 General Session

#### **73-5-8 Audits -- Reports by users to engineer.**

- (1) The Division of Water Rights shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules specifying:
  - (a) what water use data a person shall report, pursuant to this section; and
  - (b) how the Division of Water Rights shall validate the data described in Subsection (1)(a).
- (2) The Division of Water Rights may collect and validate water use data.
- (3) Every person using water from any river system or water source, when requested by the state engineer, shall within 30 days after such request report to the state engineer in writing:
  - (a) the nature of the use of any such water;
  - (b) the area on which used;
  - (c) the kind of crops to be grown;
  - (d) water elevations on wells or tunnels; and
  - (e) quantity of water used.

Amended by Chapter 58, 2016 General Session

#### **73-5-9 Powers of state engineer as to waste, pollution, or contamination of waters.**

- (1) To prevent waste, loss, pollution, or contamination of any waters whether above or below the ground, the state engineer may require the repair or construction of head gates or other devices

on ditches or canals, and the repair or installation of caps, valves, or casings on any well or tunnel or the plugging or filling thereof to accomplish the purposes of this section.

- (2) Any requirement made by the state engineer in accordance with this section shall be executed by and at the cost and expense of the owner, lessee or person having control of such diverting works affected.
- (3) If within 10 days after notice of such requirement as provided in this section, the owner, lessee or person having control of the water affected, has not commenced to carry out such requirement, or if he has commenced to comply therewith but shall not thereafter proceed diligently to complete the work, the state engineer may forbid the use of water from such source until the user thereof shall comply with such requirement.
- (4) Failure to comply with any requirement made by the state engineer under this section is a crime punishable under Section 73-2-27 if the failure to comply is knowing or intentional.
- (5) Each day that such violation is permitted to continue shall constitute a separate offense.

Amended by Chapter 215, 2005 General Session

**73-5-13 Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.**

- (1)
  - (a) A claimant to the right to the use of water, including both surface and underground water, whose right is not represented by a certificate of appropriation issued by the state engineer, by an application filed with the state engineer, by a court decree, or by a notice of claim filed pursuant to law, shall submit the claim to the state engineer in accordance with this section.
  - (b) Subsections (2) through (7) only apply to claims or corrected claims submitted to the state engineer in accordance with this section on or after May 14, 2013.
- (2)
  - (a) A claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms provided by the state engineer setting forth any information the state engineer requires, including:
    - (i) the name and mailing address of the person making the claim;
    - (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;
    - (iii) the source of supply;
    - (iv) the priority date of the right;
    - (v) the location of the point of diversion with reference to a United States land survey corner;
    - (vi) the place of use;
    - (vii) the nature and extent of use;
    - (viii) the time during which the water has been used each year; and
    - (ix) the date when the water was first used.
  - (b) The claim shall also include the following information, prepared by a Utah licensed engineer or a Utah licensed land surveyor:
    - (i) measurements of the amount of water diverted;
    - (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply that the source is capable of producing; and
    - (iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.

- (c) The state engineer may require additional information as necessary to evaluate any claim including:
  - (i) affidavits setting forth facts of which the affiant has personal knowledge;
  - (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
  - (iii) authenticated copies of original diaries, personal histories, or other historical documents that document the claimed use of water; and
  - (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.
- (3)
  - (a) A claimant, or a claimant's successor in interest, as shown in the records of the state engineer may file a corrected claim that:
    - (i) is designated as a corrected claim;
    - (ii) includes the information described in Subsection (2); and
    - (iii) bears the same number as the original claim.
  - (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is filed before the state engineer publishes the original claim in accordance with Subsection (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.
  - (c) The state engineer shall treat a corrected claim that is filed in accordance with Subsection (3)(a) as if the corrected claim were the original claim.
- (4)
  - (a) When a claimant submits a claim that is acceptably complete under Subsection (2) and deposits money with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:
    - (i) file the claim;
    - (ii) endorse the date of its receipt;
    - (iii) assign the claim a water right number;
    - (iv) publish a notice of the claim following the same procedures as provided in Section 73-3-6; and
    - (v) if the claimant is the federal government or a federal agency, provide a copy of the claim to the members of the Natural Resources, Agriculture, and Environment Interim Committee.
  - (b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.
  - (c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.
- (5)
  - (a) The state engineer shall:
    - (i) conduct a field investigation of each claim filed; and
    - (ii) prepare a report of the investigation.
  - (b) The report of the investigation shall:
    - (i) become part of the file on the claim; and
    - (ii) be admissible in any administrative or judicial proceeding regarding the validity of the claim.
- (6)
  - (a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this section may file an action in district court to determine the validity of the claim, regardless of whether the state engineer has filed the claim in accordance with Subsection (4)(a).
  - (b) Venue for an action brought under Subsection (6)(a) shall be in the county where the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.

- (c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.
  - (d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.
  - (e)
    - (i) A person filing an action challenging the validity of a claim to the use of water under this section shall notify the state engineer of the pendency of the action in accordance with state engineer rules.
    - (ii) Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation until the court adjudicates the matter.
  - (f) Upon the entering of any final order or decree in a judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, who shall incorporate the order into the state engineer's file on the claim.
- (7)
- (a) In a general adjudication of water rights under Title 73, Chapter 4, Determination of Water Rights, after completion of final summons in accordance with Section 73-4-22, a district court may, by decree, prohibit future claims from being filed under this section in the general adjudication area, division, or subdivision.
  - (b) If the state engineer receives a claim for an area where a court has prohibited filing under Subsection (7)(a), the state engineer shall return the claim to the claimant without further action.

Amended by Chapter 221, 2013 General Session

Amended by Chapter 343, 2013 General Session

Amended by Chapter 429, 2013 General Session

Amended by Chapter 429, 2013 General Session, (Coordination Clause)

**73-5-14 Determination by the state engineer of watershed to which particular source is tributary -- Publications of notice and result -- Hearing -- Judicial review.**

- (1) The state engineer may determine for administrative and distribution purposes the watershed to which any particular stream or source of water is tributary.
  - (2) A determination under Subsection (1) may be made only after publication of notice to the water users.
  - (3) Publication of notice under Subsection (2) shall be made:
    - (a) in a newspaper or newspapers having general circulation in every county in the state in which any rights might be affected, once each week for five consecutive weeks;
    - (b) in accordance with Section 45-1-101 for five weeks; and
    - (c) on the Utah Public Notice Website created in Section 63F-1-701, for five weeks.
  - (4) The state engineer shall fix the date and place of hearing and at the hearing any water user shall be given an opportunity to appear and adduce evidence material to the determination of the question involved.
- (5)
- (a) The state engineer shall publish the result of the determination as provided in Subsections (3)(a) and (b), and the notice of the decision of the state engineer shall notify the public that any person aggrieved by the decision may appeal the decision as provided by Section 73-3-14.

- (b) The notice under Subsection (5)(a) shall be considered to have been given so as to start the time for appeal upon completion of the publication of notice.

Amended by Chapter 90, 2010 General Session

**73-5-15 Groundwater management plan.**

- (1) As used in this section:
  - (a) "Critical management area" means a groundwater basin in which the groundwater withdrawals consistently exceed the safe yield.
  - (b) "Safe yield" means the amount of groundwater that can be withdrawn from a groundwater basin over a period of time without exceeding the long-term recharge of the basin or unreasonably affecting the basin's physical and chemical integrity.
- (2)
  - (a) The state engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with this section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers.
  - (b) The objectives of a groundwater management plan are to:
    - (i) limit groundwater withdrawals to safe yield;
    - (ii) protect the physical integrity of the aquifer; and
    - (iii) protect water quality.
  - (c) The state engineer shall adopt a groundwater management plan for a groundwater basin if more than one-third of the water right owners in the groundwater basin request that the state engineer adopt a groundwater management plan.
- (3)
  - (a) In developing a groundwater management plan, the state engineer may consider:
    - (i) the hydrology of the groundwater basin;
    - (ii) the physical characteristics of the groundwater basin;
    - (iii) the relationship between surface water and groundwater, including whether the groundwater should be managed in conjunction with hydrologically connected surface waters;
    - (iv) the conjunctive management of water rights to facilitate and coordinate the lease, purchase, or voluntary use of water rights subject to the groundwater management plan;
    - (v) the geographic spacing and location of groundwater withdrawals;
    - (vi) water quality;
    - (vii) local well interference; and
    - (viii) other relevant factors.
  - (b) The state engineer shall base the provisions of a groundwater management plan on the principles of prior appropriation.
  - (c)
    - (i) The state engineer shall use the best available scientific method to determine safe yield.
    - (ii) As hydrologic conditions change or additional information becomes available, safe yield determinations made by the state engineer may be revised by following the procedures listed in Subsection (5).
- (4)
  - (a)
    - (i) Except as provided in Subsection (4)(b), the withdrawal of water from a groundwater basin shall be limited to the basin's safe yield.



- (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer shall:
    - (A) determine the groundwater basin's safe yield; and
    - (B) adopt a groundwater management plan for the groundwater basin.
  - (iii) If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a different distribution.
  - (iv) A groundwater management plan shall include a list of each groundwater right in the proposed groundwater management area known to the state engineer identifying the water right holder, the land to which the groundwater right is appurtenant, and any identification number the state engineer uses in the administration of water rights.
- (b) When adopting a groundwater management plan for a critical management area, the state engineer shall, based on economic and other impacts to an individual water user or a local community caused by the implementation of safe yield limits on withdrawals, allow gradual implementation of the groundwater management plan.
- (c)
  - (i) In consultation with the state engineer, water users in a groundwater basin may agree to participate in a voluntary arrangement for managing withdrawals at any time, either before or after a determination that groundwater withdrawals exceed the groundwater basin's safe yield.
  - (ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other law.
  - (iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than all of the water users in a groundwater basin does not affect the rights of water users who do not agree to the voluntary arrangement.
- (5) To adopt a groundwater management plan, the state engineer shall:
  - (a) give notice as specified in Subsection (7) at least 30 days before the first public meeting held in accordance with Subsection (5)(b):
    - (i) that the state engineer proposes to adopt a groundwater management plan;
    - (ii) describing generally the land area proposed to be included in the groundwater management plan; and
    - (iii) stating the location, date, and time of each public meeting to be held in accordance with Subsection (5)(b);
  - (b) hold one or more public meetings in the geographic area proposed to be included within the groundwater management plan to:
    - (i) address the need for a groundwater management plan;
    - (ii) present any data, studies, or reports that the state engineer intends to consider in preparing the groundwater management plan;
    - (iii) address safe yield and any other subject that may be included in the groundwater management plan;
    - (iv) outline the estimated administrative costs, if any, that groundwater users are likely to incur if the plan is adopted; and
    - (v) receive any public comments and other information presented at the public meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);
  - (c) receive and consider written comments concerning the proposed groundwater management plan from any person for a period determined by the state engineer of not less than 60 days after the day on which the notice required by Subsection (5)(a) is given;
  - (d)

- (i) at least 60 days prior to final adoption of the groundwater management plan, publish notice:
    - (A) that a draft of the groundwater management plan has been proposed; and
    - (B) specifying where a copy of the draft plan may be reviewed; and
  - (ii) promptly provide a copy of the draft plan in printed or electronic form to each of the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
  - (e) provide notice of the adoption of the groundwater management plan.
- (6) A groundwater management plan shall become effective on the date notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.
- (7)
  - (a) A notice required by this section shall be:
    - (i) published:
      - (A) once a week for two successive weeks in a newspaper of general circulation in each county that encompasses a portion of the land area proposed to be included within the groundwater management plan; and
      - (B) in accordance with Section 45-1-101 for two weeks;
    - (ii) published conspicuously on the state engineer's website; and
    - (iii) mailed to each of the following that has within its boundaries a portion of the land area to be included within the proposed groundwater management plan:
      - (A) county;
      - (B) incorporated city or town;
      - (C) a local district created to acquire or assess a groundwater right under Title 17B, Chapter 1, Provisions Applicable to All Local Districts;
      - (D) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District Act;
      - (E) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;
      - (F) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;
      - (G) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;
      - (H) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;
      - (I) special service district providing water, sewer, drainage, or flood control services, under Title 17D, Chapter 1, Special Service District Act;
      - (J) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; and
      - (K) conservation district, under Title 17D, Chapter 3, Conservation District Act.
  - (b) A notice required by this section is effective upon substantial compliance with Subsections (7)(a)(i) through (iii).
- (8) A groundwater management plan may be amended in the same manner as a groundwater management plan may be adopted under this section.
- (9) The existence of a groundwater management plan does not preclude any otherwise eligible person from filing any application or challenging any decision made by the state engineer within the affected groundwater basin.
- (10)
  - (a) A person aggrieved by a groundwater management plan may challenge any aspect of the groundwater management plan by filing a complaint within 60 days after the adoption of the groundwater management plan in the district court for any county in which the groundwater basin is found.
  - (b) Notwithstanding Subsection (9), a person may challenge the components of a groundwater management plan only in the manner provided by Subsection (10)(a).
  - (c) An action brought under this Subsection (10) is reviewed de novo by the district court.

- (d) A person challenging a groundwater management plan under this Subsection (10) shall join the state engineer as a defendant in the action challenging the groundwater management plan.
- (e)
  - (i) Within 30 days after the day on which a person files an action challenging any aspect of a groundwater management plan under Subsection (10)(a), the person filing the action shall publish notice of the action:
    - (A) in a newspaper of general circulation in the county in which the district court is located; and
    - (B) in accordance with Section 45-1-101 for two weeks.
  - (ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for two consecutive weeks.
  - (iii) The notice required by Subsection (10)(e)(i) shall:
    - (A) identify the groundwater management plan the person is challenging;
    - (B) identify the case number assigned by the district court;
    - (C) state that a person affected by the groundwater management plan may petition the district court to intervene in the action challenging the groundwater management plan; and
    - (D) list the address for the clerk of the district court in which the action is filed.
  - (iv)
    - (A) Any person affected by the groundwater management plan may petition to intervene in the action within 60 days after the day on which notice is last published under Subsections (10)(e)(i) and (ii).
    - (B) The district court's treatment of a petition to intervene under this Subsection (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.
  - (v) A district court in which an action is brought under Subsection (10)(a) shall consolidate all actions brought under that subsection and include in the consolidated action any person whose petition to intervene is granted.
- (11) A groundwater management plan adopted or amended in accordance with this section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (12)
  - (a) Recharge and recovery projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted from this section.
  - (b) In a critical management area, the artificial recharge of a groundwater basin that uses surface water naturally tributary to the groundwater basin by a local district created under Subsection 17B-1-202(1)(a)(xiii), in accordance with Chapter 3b, Groundwater Recharge and Recovery Act, constitutes a beneficial use of the water under Section 73-1-3 if:
    - (i) the recharge is done during the time the area is designated as a critical management area;
    - (ii) the recharge is done with a valid recharge permit;
    - (iii) the recharged water is not recovered under a recovery permit; and
    - (iv) the recharged water is used to replenish the groundwater basin.
- (13) Nothing in this section may be interpreted to require the development, implementation, or consideration of a groundwater management plan as a prerequisite or condition to the exercise of the state engineer's enforcement powers under other law, including powers granted under Section 73-2-25.
- (14) A groundwater management plan adopted in accordance with this section may not apply to the dewatering of a mine.
- (15)

- (a) A groundwater management plan adopted by the state engineer before May 1, 2006, remains in force and has the same legal effect as it had on the day on which it was adopted by the state engineer.
- (b) If a groundwater management plan that existed before May 1, 2006, is amended on or after May 1, 2006, the amendment is subject to this section's provisions.

Amended by Chapter 97, 2012 General Session